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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,009	09/27/2005	Andrew Beger	DC5116 PCT1	1375
137 7590 11/13/2007 DOW CORNING CORPORATION CO1232 2200 W. SALZBURG ROAD P.O. BOX 994 MIDLAND, MI 48686-0994			EXAMINER LOEWE, ROBERT S	
			ART UNIT 4134	PAPER NUMBER
			NOTIFICATION DATE 11/13/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents.admin@dowcorning.com

## Office Action Summary

Application No.

10/551,009

Applicant(s)

BEGER ET AL.

Examiner

Robert Loewe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/27/05.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Oath/Declaration*

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: It does not identify the citizenship of Nagambai Subramaniam.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Freiberg et al. (US Pat. 6,132,664).

Claim 1: Freiberg et al. teaches a moisture-curable composition comprising: (a) an organopolysiloxane having not less than two silicon-bonded alkoxy/hydrolysable groups (2:50-59) and (b) an alkoxy silane having the formula  $R^4_zSi(OR)_{4-z}$  where z can be 0, 1, or 2. When z is equal to 2, the organosilane has the formula  $G_2-Si-R^1_2$  of instant claim 1 (3:1-7). Freiberg et al. further teaches that the composition comprises (c) a filler (3:9), and (d) a photocatalyst (2:60-67).

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Freiberg et al. further teaches that when component (b) does not contain an unsaturated group, then component (e) is provided which can be a short chain siloxane (5:1-31).

Claims 2 and 3: Freiberg et al. further teaches that the organosilane (b) can be vinylmethyldimethoxysilane (6:52).

Claims 4 and 5: Freiberg et al. further teaches that the filler (c) can be fumed silica and/or a fatty acid treated precipitated calcium carbonate (7:1-5).

Claims 6-8: Freiberg et al. further teaches that the photocatalyst is a titanate of the formula  $Ti(OR^5)_4$  where  $R^5$  is a hydrocarbon group. Examples include those found on column 8, lines 51-67. It is recognized by the examiner that component (d) is not referred to as a photocatalyst by Freiberg et al. However, because Freiberg et al. teaches the same species as those found in instant claims 6-8, it inherently follows that component (d) as taught by Freiberg et al. can function as a photocatalyst as claimed in instant claims 1 and 6-8.

Claim 9: Freiberg et al. further teaches that component (a) is a linear polydiorganosiloxane having terminal groups of  $-Si(R^2)_2-R^3-Si(R^2)_k(OR^4)_{3-k}$ . Examples include the polydiorganosiloxanes of formulas (I), (II), and (III) found on columns 4 and 5 and polymer 1 found on column 8 of Freiberg et al.

Claim 10: Freiberg et al. further teaches that component (e) can be an unsaturated organopolysiloxane having a degree of polymerization from 2 to 50 and at least two silicon bonded functional groups which are reactive with the alkoxy groups of component (a) (5:1-31). The value of "P" of structure (IV) is such that the viscosity of component (a) is within the range of 0.5 to 3000 Pa·s (3:38-41).

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Claim 11: Using example 2A of Table 1, Freiberg et al. further teaches the composition of instant claim 1. Specifically, when normalizing the values of table 1 to account for 100 parts of component (a), Freiberg et al. teaches: 100 parts of component (a), 3.4 parts of component (b), 46 parts of component (c), and 2.3 parts of component (d) (Table 1, sample 2A). Sample 2A is just a representative example, as the other entries in table 1 also effectively teach instant claim 11.

Claim 12: Freiberg et al. further teaches an elastomeric product comprising the composition of instant claim 1 (1:8-19).

Claim 13: The Office realizes that Freiberg et al. does not explicitly teach all of the claimed physical properties. In the instant case, Freiberg et al. does not teach a cured sealant having an air-sealant interface surface with a maximum gloss value of 45. However, Freiberg et al. teaches all of the claimed ingredients in the claimed amounts. Therefore, the claimed physical property of instant claim 13 would inherently be achieved by the composition as taught by Freiberg et al. If it is the applicant's position that this would not be the case: (1) evidence would need to be provided to support the applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Claim 14: Freiberg et al. further teaches a method of using the composition of instant claim 1 as a sealant (2:5-10).

Claim 15: Freiberg et al. further teaches a method of forming an elastomeric mass between surfaces which is adherent to at least two such surfaces which method comprises

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introducing between the surfaces a mass of a moisture curable composition of instant claim 1 and curing the composition in the presence of moisture (7:25-8:30).

### ***Relevant Art Cited***

The prior art made of record and not relied upon but is considered pertinent to applicants disclosure can be found on the attached PTO-892 form.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Loewe whose telephone number is (571) 270-3298. The examiner can normally be reached on Monday through Friday from 9:30 AM to 7:00 PM EST.

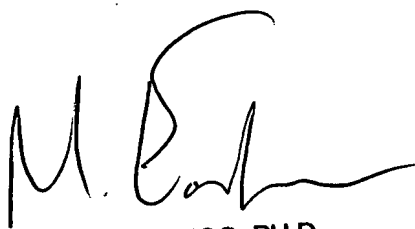
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RSL  
23-Oct-07



MARK EASHOO, PH.D.  
SUPERVISORY PATENT EXAMINER

07/Nov/07